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## The Contemporary Face of the Customs System in the European Union<sup>1</sup>

**Abstract:** The EU customs system is currently a complex arrangement of customs institutions operating within the public and market space of the European Union, institutions which are strongly interlinked and perform multi-faceted tasks resulting from present challenges of the customs policy. The aim of the article is to analyze the definition of the customs system as well as to characterize the legal and organizational dimensions of the Union customs system against the background of challenges related to globalization, with a particular focus on customs administrations of Member States. The methodology employed in the paper consists in a descriptive analysis, preceded by a review of the subject literature and the EU secondary legislation as well as a comparative analysis. The research findings allowed a conclusion to be drawn that the customs system of the European Union efficiently and effectively adapts to new challenges and ever-increasing demands resulting from the changing conditions of the international trade, both in the legal aspect, i.e. regulations on trade in goods, as well as in the organizational dimension, i.e. activities of EU institutions shaping the customs system and customs administrations of Member States.

**Key-words:** customs system, customs administrations, customs union, European Union

### Introduction

1 July 2018 will mark the 50th anniversary of the establishment of the customs union in the European Union, and, consequently, also an anniversary of the functioning of the EU customs system. The Union customs system is currently a complex arrangement of numerous elements, which are strongly interlinked and perform multi-face-

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ted tasks resulting from present challenges posed by globalization. The continuing challenge for the system is the ever-evolving surroundings of the European Union. The existing economic conditions, fast-changing technological factors and increasingly more complex supply chains, in combination with the rising volume of the world trade, the constant danger posed by the international crime and security threats, necessitate that the three principal dimensions of the customs system, i.e. legal, organizational and economic, must be coordinated effectively.

The aim of the article is to analyze the definition of the customs system as well as to characterize the legal and organizational dimension of the Union customs system against the background of challenges related to globalization, with a particular focus on customs administrations of Member States. In order to achieve this goal, the descriptive analysis was employed as the scientific method, preceded by a review of the subject literature and the EU secondary legislation as well as the comparative method. The issues addressed in the present paper are significant as the existing literature mainly concerns the functioning of the customs union and the economic dimension of the customs system, i.e. the consequences of the functioning of particular legal and organizational institutions of the system for the economy and society. The considerations presented in the article constitute an attempt at bridging the research gap since the state of the art with regard to the legal and administrative dimension of the EU customs system in the context of challenges related to globalization is often disregarded, which corresponds with lack of scientific papers on this area of interest.

## **The essence of the customs system – the definitional considerations**

‘Customs system’ is a commonly used term – this word appears in titles of numerous articles and studies, nevertheless, authors who employ this term do not often define it but rather focus on selected customs issues. The authors point to interpretation difficulties, drawing attention, on several occasions, to the ambiguity of the term, at the same time, they discriminate between the notion of the customs policy and customs system, indicating that the concept of the customs policy is narrower and is included in the notion of the customs system.

An analysis of the notion in its two dimensions has been performed by S. Waschko. In the narrow definition, he restricted the customs system to the formal and

material side – everything which is directly related to the duty, limiting it, however, solely to the customs tariff and act [S. Waschko 1971, pp. 16–19]. However, in the wider perspective, elements of the customs system included also goals and means of the economic policy (including customs) which are directly related to the foreign trade and lie within the competence of customs administrations [S. Waschko 1971, pp. 16–19]. Another author, G. Mosiej, carried out a decomposition of the concept, described its components and properties and defined relations among them. He indicated connotations of the customs system with politics, law, organization, technology, border and barrier [G. Mosiej 2009, p. 211]. Whereas J. Jura, defines the customs system as an organized and ordered system of institutions establishing the customs law as well as a collection of institutions tasked with its enforcement, connected with one another by various relations. This system has been created and has functioned in order to provide legislation for customs regulations and collect duties [J. Jura 2006, p. 51]. According to A. Drwiłło, the essence of the customs system should be associated with the entirety of forms and legal-customs tools designed to levy and collect tariffs and duties [A. Drwiłło 2003, p. 20]. S. Naruszewicz and M. Laszuk state that the customs system encompasses all activities of the Community and particular Member States, aimed at regulating the trade in goods with foreign parties, performed within the customs law, by means of the customs administration [S. Naruszewicz, M. Laszuk 2004, p. 36]. To summarize the theoretical considerations on the explanation of the term ‘customs system’, a definition of the EU customs system needs to be formulated. According to the Author, the Union customs system should be understood as an arrangement of customs institutions, functioning in the public and market space of the European Union, related to one another by a network of interlinks, completing goals and tasks resulting from the current customs policy and the adopted model for international customs relations including relations among participants of the EU customs union as well as between them and third countries but also cooperation in international forums (including collaboration within the World Customs Organization – WCO, the World Trade Organization – WTO). The expression ‘customs institution’, used in the definition, ought to be understood as norms and organizations. The norm is to be viewed in terms of the adopted legislation, i.e. the Union Customs Code (UCC) with the entire UCC legal package, the Council regulation setting up a Community system of reliefs from customs duty; Common Customs Tariff, international conventions and agreements, regulations implementing non-tariff instruments, national customs legislation complementing the Union customs law, as well as informal norms (codes

of ethics, recommendations, resolutions, communications, good practices etc.). The category of organizations consists of such participants as customs administrations of Member States; institutions of the Union directly shaping the customs system; EU specialized agencies (including the European Police Office – Europol, the European Anti Fraud Office – OLAF, the European Border and Coast Guard Agency – Frontex, European Agency for Judicial Cooperation – Eurojust) and other participants affecting the customs matters indirectly. The area within the EU in which customs institutions operate is the public dimension. Whereas the market dimension is understood as the common customs territory in which participants of supply chains function (i.e. economic operators at particular stages of the exchange) are related to the public dimension of the system by participating in customs operations.

## **The legal and organizational framework of the customs system of the European Union**

The customs union, composed of Member States, constitutes the legal basis for the customs system within the European Union. The rationale for establishing the union was the unconditional elimination of tariffs and customs duties, which have an equivalent effect on trade between Member States as well as laying down the common customs tariff for trade with third countries. 1 July 1968 is regarded as the formal establishment date of the customs union. The European customs union was founded on basis of four customs systems, adopted in six countries (the Netherlands, Belgium, Luxemburg, France, Italy and the Federal Republic of Germany). Its role and importance were emphasized in the Communication on developing the EU customs union and its governance [European Commission, 2016a, p.2]: “The Customs Union (...) created the conditions for establishing the single market and served as a stable foundation for economic integration and growth”.

Since 1 January 2009, the legal foundation for the functioning of the customs union is the Treaty on the Functioning of the European Union [TFUE, Title II]. It imposes an absolute prohibition on levying customs duties on imports and exports and charges having equivalent effect [TFUE, Articles 28–30]. The treaty also stipulates no quantitative restrictions on exports or imports between Member States, as well as all measures having an equivalent effect [TFUE, Articles 34–36].

The customs system of the European Union is directly shaped by: the European Parliament, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Economic and Social Committee (Table 1).

**Table 1. The role of the Community institutions in the shaping of the customs system**

<b>European Parliament</b>
the role of a co-legislator of customs regulations. Customs issues are covered by the Internal Market and Consumer Protection (IMCO).
<b>Council of the European Union</b>
the role of a co-legislator of customs regulations and an author of recommendations, resolutions and other programme documents related to customs matters. Customs issues are the responsibility of: the Working Party on Customs Union – it deals with customs legislation, is responsible for facilitating common positions with international organizations (mainly WCO) as well as with third countries; the Customs Cooperation Working Party – its operations focus on collaboration of customs administrations in the area of combating customs regulations violations, issues related to controls of goods transited via the external EU borders, as well as conducting joint customs operations. Furthermore, customs matters also lie within the competence of the Indirect Taxation Subgroup – as regards the excise tax, and the Expert Group on Gambling Services – in the area of gambling. Customs issues, particularly with regard to customs cooperation, are also examined by working parties dealing with police collaboration (the Working Party on Frontiers, on Terrorism, for Schengen Matters).
<b>European Commission</b>
XXI Commission Directorate-General 'Taxation and Customs Union' (DG TAXUD) is responsible for administering the customs union and the functioning of customs systems of particular Member States. The mission of the Directorate is the customs union governance and the development of the EU in the area of customs tariffs and taxes. Its activities focus on: simplifying and modernizing procedures and regulations; supporting Member States in the appropriate implementation of the Union customs regulations; governance and security of the external EU borders; combating illicit trade; strengthening the security and safety of the international supply chain as well as international cooperation. DG TAXUD's duty is to ensure that actions taken by customs administrations of Member States are consistent, coherent, non-discriminatory, regardless of where the goods enter or exit the EU customs territory. This body performs its tasks by means of five directorates, which include units specializing in particular areas of the Union customs and tax system.
<b>Court of Justice of the European Union</b>
acts as a stabilizer of the customs law – it shapes the judicature concerning the customs issues, which applies to all institutions (including customs administrations), economic operators and citizens.
<b>European Economic and Social Committee</b>
takes part in shaping the customs law and system by means of opinions on legislative proposals, already at the stage of preparing bills. The preparation of opinions on legislative acts concerning the customs union is the responsibility of the Section for Single Market, Production and Consumption (INT).

Source: Author's own elaboration.

## The role of Member States' customs administrations in the EU customs system

The EU customs services are responsible for the supervision of the international trade of the Union as well as the security of the entire supply chain [Regulation 952/2013, Article 3]. In the course of one year, they process over 290 million customs declarations – over 98% are submitted electronically. In 2015, 91% of customs import declarations were released within one hour and only in the case of 2%, it lasted for over 48 hours [www 1]. In 2015, 28 customs administrations of Member States collected EUR 23.3 bln, 80% of which, i.e. EUR 16.6 bln, went to the EU budget [www 1], in 2016, the amount of collected customs duties transferred to the Union budget totalled EUR 20.11 bln [European Commission, 2016b, p. 101].

The functioning of customs services of Member States is based on the common ground in the form of the Union Customs Code and Common Customs Tariff. Even though the implementation of regulations resulting from these two acts lies within the responsibility of each Member State and the range of duties of individual administrations differs from one another - it is determined by each country's national regulations, in effect – bearing in mind the effective functioning of the Union customs system – customs administrations of the Union countries must act as if they were one entity.

Customs services of Member States perform both the Community and national tasks at the same time. However, despite the lack of strict rules in this area, the tasks and competences of customs authorities in individual countries differ from one another only to a small degree. All customs administrations carry out tasks of the fiscal character. The majority of them, besides the collection of tariffs, perform the function of the tax collector with regard to other taxes, most frequently – the excise tax. All customs services share a common task of customs supervision, carried out as part of the customs union. Within the principal competences related to foreign trade, administrations are granted the supervisory powers – customs officers are competent to control goods, persons, rooms and means of transport. However, the remit varies and is dependable on internal regulations. Furthermore, customs authorities may exercise their police and criminal powers, within which they may initiate investigation procedures. The protective function of customs services is vital but also multifaceted. Activities in the area of security and safety are aimed at [Świerczyńska 2014, p. 223]: economic operators (protection of the supply chain from an influx of goods constitu-

ting unfair competition, including protection from violations of intellectual property rights, trade marks, patent rights); the state (protection of the national budget from duties and tax revenue loss); the society (safeguarding against imports of goods not meeting quality standards, articles or equipment posing a threat to life and health of citizens) as well as the natural environment (protection from the illegal sale of endangered species as well as against importing harmful substances and microorganisms).

Having analysed the structure of customs administrations, we may indicate certain common features. First of all, they always belong to state structures: in virtually every case, the customs administration is subordinated to fiscal authorities – supervision of the Ministry of Finance. Most frequently, customs authorities consist of a central institution (in the form of a department or a directorate within the Ministry of Finance) and customs offices in the field (complementing this institution). This organizational layout is typical of the majority of administrations, e.g. Austria, the Netherlands, Belgium, Cyprus and Lithuania. In several cases, customs authorities operate as independent institutions and answer to the Ministry of Finance for their activities: Great Britain, Sweden, Ireland, Finland. In the case of a few EU countries, customs services are combined with tax authorities, e.g. in Poland, Denmark, Hungary. Furthermore, a distinctive feature is the developed, three-tier structure – the central, regional and local level, found in such countries as France, Germany, Poland, Bulgaria, Italy.

## **The customs systems in the European Union – priorities and challenges**

The history of the European customs union shows that the union has successfully performed its functions, quickly adapting the customs system to new challenges and ever-increasing requirements resulting from such factors as the enlargement of the European Union to include new countries or the changing conditions of conducting business activity in the international trade.

Currently, the determining factor for the proper functioning of the customs system is ensuring that the Union Customs Code (UCC) regulations are implemented appropriately. The Union Customs Code is a result of the customs law reform, presently – the foundation of the EU customs system. UCC was adopted on 9 October 2013 and it came into force on 30 October 2013 [Regulation 952/2013]. Nevertheless, the provisions contained in it have been enforced since 1 May 2016 and, moreover, to a limited

degree – the new act will be enforced in its entirety no sooner than 1 January 2021. The ensuing situation resulted from the necessity to develop and adopt regulations that would execute the UCC provisions thoroughly, i.e. the implementing regulation [Implementing Regulation 2015/2447], the delegated regulation [Delegated Regulation 2015/2446] as well as the transitional regulation, defining transitional rules [Regulation 2016/341]. In order to achieve the objective contained within the UCC preamble, i.e. simplifying and standardizing the regulations, facilitating legitimate trade by the use of straightforward and uniform procedures, supporting reliable and trustworthy economic entities but also, ultimately, making all customs and trade transactions electronically, will require the Union customs system to ensure uniformity of customs administrations operations as well as effective cooperation. According to the Commission, the challenge related to the implementation of the customs regulations necessitates equivalence of results by customs authorities operating in various geographical, budgetary and organisational conditions [European Commission, 2016a, p. 3].

In the coming years, actions that will be taken within the union customs system should still focus on managing the customs clearance of goods and controls, particularly in terms of developing a high-quality, multi-faceted, effective, efficient and common approach to risk management, which constitutes the foundation of customs controls. However, it ought to be taken into account that a considerable decrease of the customs clearance time and improvement of customs processing in the EU with regard to customs service of goods, may be expected in 2021, when all UCC provisions will be implemented in practice. It will be when the union customs system begins to function in a fully-electronic environment and the entire communication between customs authorities and participants of supply chains takes place by means of IT systems.

Furthermore, a common approach is crucial in terms of enforcement of regulations. Currently, despite the fact that the EU customs regulations apply in all Member States, the sanctions for violating them differ significantly. Thus, a uniform categorization and levels of sanction for infringing the Union customs laws are of the utmost importance. The continued work on the directive regarding the union legal framework for customs laws violations and sanctions [European Economic and Social Committee (2016)] is, undoubtedly, the right idea for the effective protection of financial interests of the European Union.

Other priorities for the customs system concern intensifying cooperation between customs administrations of Member States as well as enhancing the ability of cu-



stoms authorities to operate and attain coordination with numerous other areas of the EU policy, which affect the objectives of customs administrations and broaden the scope of these tasks. In order to achieve the consensus among customs authorities, it will be vital to introduce consistent quality standards and appropriate training [European Commission, 2016a, pp.7–14]. Within the EU customs system, a challenge that is still posed to customs administrations is implementing new and coherent solutions that would result in improving customs service on the one hand, and, on the other hand, would effectively combat customs and tax crime, and, consequently, better protect the trade in goods.

## **Summary**

The EU customs system constitutes one customs territory consisting of 28 customs administrations. Despite the existing freedom, granted to Member States to define the organizational rules, tasks and duties of their customs services, customs administrations can operate coherently. The character of the customs union and system causes customs administrations to be interdependent. The variability and complexity of the current conditions for trading in the international trade in goods has contributed to the change of the role of customs administrations - the range of responsibilities related to controls and tax collection has been increased, there have emerged new tasks connected with security, trade facilitation and protection of economic interests of the EU. Since customs services are presently facing new challenges resulting from different aspects of the trade policy, they should have the ability to assume the role of a multifunctional service provider – for the budget, business and the society. Undeniably, the function of the revenue collector is still significant, however, the uncertainty and security threats cause the protective function to gain in importance and demand of the customs services that they act as a versatile guardian of the market.

Owing to the extent and complexity of the issue of the functioning of the Union customs system as well as volume restrictions of the present paper, some of the more interesting, often controversial, aspects have been left out: interdependency has been mentioned, however, the issue of competition in the activities of Member States' customs services or the consequences of the functioning of particular legal and organizational institutions of the system for the economy have not been included.

To conclude, it has to be stressed that the evolution of the customs system of the European Union necessitates coordination of all elements - in the legal, organizational and economic dimension, and should be aimed at providing high-quality services. According to the Author, previous activities indicate that the customs system of the European Union both in the legal aspect, i.e. regulations on trade in goods, as well as on the organizational side, i.e. activities of EU institutions shaping the customs system and Member States customs administrations, efficiently and effectively adapts to new tasks and ever-increasing requirements resulting from changing conditions of participating in the international trade. It should be emphasized that a well-organized and governed customs system has a positive impact on the competitiveness of companies and economies of Member States.

## References

Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, O. J. L 343 of 29.12.2015.

Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446, O. J. L 69 of 15.3.2016.

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, O. J. L 343 of 29.12.2015.

**Drwiłło A. (2003)**, *Postępowanie ochronne w prawie celnym*, Wydawnictwo Arche, Gdańsk.

**European Commission (2016a)**, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee Developing the EU Customs Union and Its Governance*, Brussels 21.12.2016, COM (2016) 813 final.

**European Commission (2016b)**, *Report on budgetary and financial management of the European Commission* (Section III of the EU Budget) Financial Year 2016.

**European Economic and Social Committee (2016)**, *Opinion – Proposal for a directive of the European Parliament and of the Council on the union legal framework for customs infringements and sanctions*, (COM(2013) 884 final – 2013/0432 (COD)); O. J. C 487/57 of 28.12.2016.

**Jura J. (2006)**, *Vademecum celnictwa*, Wyższa Szkoła Cła i Logistyki, Warszawa.

**Mosiej G. (2009)**, *System celny. Teoria i praktyka*, „Monitor Prawa Celnego i Podatkowego”, No. 6–7.

**Naruszewicz S., Laszuk M. (2004)**, *Wspólnotowe prawo celne*, LexisNexis, Warszawa.

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, O. J. L 269 of 10.10.2013.

**Świerczyńska J. (2014)**, *Bezpieczeństwo i ochrona rynku jako priorytetowy obszar działania europejskiej służby celnej*, „Prace Naukowe” nr 369, Uniwersytet Ekonomiczny we Wrocławiu.

**TFUE**, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon*, 13 December 2007, O. J. C 306 of 17.12.2007. Consolidated version of the Treaty - O. J. C 83/47 of 30.03.2010.

**Waschko S. (1971)**, *Systemy celne*, PWN, Warszawa.

### **Electronic references:**

(www 1) [https://ec.europa.eu/taxation\\_customs/facts-figures\\_en](https://ec.europa.eu/taxation_customs/facts-figures_en) [02.05.2017].